IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 7859 of 2007(I)

PETITIONER:

M.C.BABU RAJ,S/O.CHELLAPPAN PILLAI,
USHA MANDIRAM,PULAMON P.O,KOTTARAKKARA,
KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS:
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1. **THE ASSISTANT EXECUTIVE ENGINEER,**
   P.W.D DISTRICT PANCHAYATH SUB DIVISION,
   KOTTARAKKARA,KOLLAM DISTRICT.

2. **THE NEDUVATHOOR GRAMA PANCHAYATH,**
   REPRESENTED BY ITS SECRETARY,NEELESWARAM P.O.,
   KOTTARAKARA, KOLLAM DISTRICT.

3. **THE NEDUVATHOOR GRAMA PANCHAYATH**
   COMMITTEE,REPRESENTED BY ITS PRESIDENT,
   NEELESWARAM P.O., KOTTARAKKARA, KOLLAM DISTRICT.

BY ADV. SRI.K.V.ANIL KUMAR for R2 & R3
BY SR.GOVERNMENT PLEADER SRI.K.J.MOHAMMED ANZAR for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.7859/2007 I

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF DECISION OF THE RESPONDENTS 2 AND 3 DTD. 10/11/1993.

EXT.P2: COPY OF THE COMMUNICATION NO.A1-33/93 DTD. 28/02/1997 ISSUED BY 2ND RESPONDENT DIRECTING THE 1ST RESPONDENT TO TAKE IMMEDIATE STEPS TO ISSUE CERTIFICATES.

EXT.P3: COPY OF THE COMMUNICATION NO.A1-33/93 DTD. 20/12/1999 ISSUED BY THE 2ND RESPONDENT TO 1ST RESPONDENT.

EXT.P4: COPY OF THE COMPLETION CERTIFICATE DTD. 28/07/2000 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P4(A): COPY OF THE COMPLETION CERTIFICATE DTD. 27/07/2000 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P4(B): COPY OF THE COMPLETION CERTIFICATE DTD. 27/07/2000 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT.P5: COPY OF THE FINAL BILL ORDER NO.A1-1238/92 DTD. 31/08/2000 FOR A SUM OF RS.20,246/-.

EXT.P5(A): COPY OF THE FINAL BILL ORDER NO.A1-1240/92 FOR A SUM OF RS.27,868/-.

EXT.P5(B): COPY OF THE FINALBILL ORDER NO.A1-1241/92 FOR A SUM OF RS.28,977/-.

EXT.P6: COPY OF THE COMMUNICATION NO.D2-902/2002 DTD. 07/05/2002 ISSUED BY 1ST RESPONDENT TO THE EXECUTIVE ENGINEER, CP DIVISION, KOLLAM.

EXT.P7: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE MINISTER FOR LOCAL BODIES.

EXT.P8: COPY OF THE DECISION DTD. 25/12/2004 ISSUED BY RESPONDENTS 2 & 3.

EXT.P9: COPY OF THE COMPLAINT DTD. 07/12/2006 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P10: COPY OF THE ORDER NO.PA-4-2672002 DTD. 18/03/2002.

2ND RESPONDENT'S EXHIBIT:

EXT.R2(A): COPY OF THE REPORT FILED BY THE PANCHAYAT DTD. 10/03/2006.

/TRUE COPY/

KSS **P.A.TO JUDGE**

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 7859 of 2007

Dated this the 23rd day of October, 2007

JUDGMENT

The grievance of the petitioner, an educated unemployed youth who was given contract for the execution of three constructions works viz. Pulloor – Pullamala Road, Puthenpuravathukkal – Elippara Road and Mini Stadium within the area of the 2nd respondent Panchayat, is that despite the satisfactory completion of the work way back on 28.2.1997 and the issuance of Ext.P4 to P4 (b) completion certificate by the Panchayat and the approval of the works by the first respondent Technical Authoritiy, he is not getting payment.

2. It is conceded in the counter affidavit that an agreement was executed by the petitioner with the Panchayat on 26.4.2003 for carrying out the three works. It is contended that on the terms of that agreement the petitioner was expected to complete the work in the year 2003 – 04 itself. It is also contended that on a scrutiny of the Panchayat records, no records are seen indicating that the Panchayat had taken a decision for extending the work. It is also contended that no records are seen which would show that the Panchayat wanted

the estimate be revised. It is however conceded that as requested by the petitioner the Panchayat requested the Assistant Executive Engineer (first respondent) on 4.11.1999 for modifying the estimate if necessary. The case projected by the petitioner on the basis of Ext.P4, P4(a) and P4 (b) completion certificates Ext.P5, P5(a) and P5 (b) final bills recommended by the Technical Authority that in spite of satisfactory completion of the work the Panchayat has not disbursed payments is not seen specifically denied.

3. The dispute raised seems to be only regarding the delayed execution of the work. Even if it is assumed that there was delay on the part of the petitioner in executing the work, in as much as the completion of the work is not seriously disputed and it is not contended that the work executed was below the standards, I do not find any justification for denying payment to the petitioner since the citizens of the Panchayat have been benefited by the work actually executed. A total amount of Rs.77,091/- has been recommended for payment by the Technical Authority after making the statutory deductions way back in 2002. Non payment of atleast that principal amount certainly amounts to negation of the petitioner's fundamental rights. The petition writ will stand allowed to the following extent.

4. Respondents 2 and 3 are directed to release a sum of

Rs.77,091/- to the petitioner within two months of receiving copy of this judgment. If payment is not made within the stipulated time amount will carry interest at the rate of 12% p.a. from this date.

PIUS C. KURIAKOSE,
JUDGE.

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